NO. 80-564

Supreme Court, U. S.
FILED
OCT 9 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1980

TERRY DUPLANTIS,
Petitioner,

VERSUS

STATE OF LOUISIANA,
Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE
STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the search at the time of booking for simple trespass of the inside flap of a person's wallet and the further search of the tinfoil found in the flap, constituted an unreasonable search when a stated purpose of the search was to check for contraband.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

NO.

TERRY P. DUPLANTIS, Petitioner,

v.

STATE OF LOUISIANA, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

The petitioner, Terry P. Duplantis, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Louisiana entered in this proceeding on September 3, 1980.

OPINION BELOW

The opinion of the Supreme Court of the State of Louisiana appears in the Appendix hereto.

JURISDICTION

The judgment of the Supreme Court of the State of Louisiana was entered on September 3, 1980, and no petition for rehearing was filed, and this petition for certiorari was filed within 30 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257 (3).

STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourth Amendment:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

The petitioner, Terry P. Duplantis, was convicted in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, on June 25, 1979, after trial by a jury of possession of a trace amount of "PCP" and was sentenced on September 10, 1979, to five years imprisonment.

The petitioner was arrested on March 3, 1979, at 2:30 p.m. for the crime of simple trespass when he was found in a model apartment taking a shower. A thorough search was made of the person of the petitioner at the time of his arrest and no contraband was found. He was at that time taken into custody and booked at 7:15 p.m. While in custody and at the police station, the petitioner was relieved of his personal

property including a wallet, and the booking officer opened defendant's wallet for purposes of making an inventory search and to check for contraband, at which time he found four pieces of tinfoil inside a narrow flap in the petitioner's wallet. The four pieces of tinfoil were then opened by the booking officer to inspect the contents, revealing a trace of white powder, at which time a State chemist was called to perform an analysis which analysis showed the powder to contain traces of "PCP." The petitioner was then at 8:00 p.m. booked for possession of "PCP."

REASONS FOR GRANTING THE WRIT

THE LOUISIANA SUPREME COURT HAS APPROVED AND ENCOURAGED THE POLICY OF SEARCHING FOR CONTRABAND IN PLACES OF HIGH EXPECTATION OF PRIVACY AT THE TIME OF BOOKING UNDER THE SUBTERFUGE OF INVENTORY SEARCH.

As a result of this instant decision, every person arrested in the State of Louisiana will at the time of booking be subject to unreasonable search of not only his person, but more importantly all objects within his control; in particular that one object that has the highest expectation of privacy, his wallet, under the subterfuge of an inventory search. The searching officer testified at the hearing on the motion to suppress and in trial, that it was the policy of the Sheriff's office to search all arrestees' wallets to discover contraband as well as to inventory the contents of items taken from a

defendant. The petitioner is fully in agreement with the principle that the surrender of personal effects and inventory search at the time of booking is designed to protect the arrestee's property, the security of his incarceration and the personal safety of those who come in contact with him. The petitioner was not found at the time of his arrest to be in possession of any weapon, dangerous instrumentality or contraband that would have justified a thorough and more extensive search at the time of booking. The Louisiana Supreme Court justifies this unreasonably extensive search of the petitioner's wallet which has the highest expectation of privacy on the basis that it is in accordance with standard police procedure to list all property taken from a defendant at the time he is booked.

Petitioner submits that to allow a search for contraband at the time of booking without any further grounds to justify said search other than the fact of arrest extends this Court's interpretation of reasonable searches beyond that which was intended as expressed in *South Dakota v. Opperman*, 428 U.S. 364, (1975); *U.S. v. Chadwick*, 433 U.S. 1(1978) U.S. v. Schleis 543 F.2d 59, remanded 433 U.S. 905, (1978); *U.S. v. Marchand*, 564 F.2d 983 (2nd Cir., 1977), cert. den, 434 U.S. 1015 (1978), nor does it fall within the rules as outlined in *U.S. v. Edwards*, 415 U.S. 800 (1973), in that this search did not in any way relate to the crime for which the defendant was arrested. For this Court to allow this extensive intrusion into a person's wallet

without any further factual basis other than "inventory," when a further stated purpose was to check for contraband, far exceeds the limited scope necessary for the police to carry out its caretaking function and invites the wholesale unreasonable search which could logically extend to the search of the orifices of a person's body under the guise of searching for contraband as was the stated purpose of this search.

The Louisiana Supreme Court has further espoused the principle that it was a reasonable search and in accordance with the constitutionally recognized right to make an inventory search to open up the tinfoil package to "facilitate his making a comprehensive examination and list of all contents as is required." The Court is urged that the requirements of an inventory search are not so comprehensive as to encourage or tolerate the intrusion into the person's wallet and even if said intrusion is constitutionally permissible, it is only permissible to the extent of discovering items of value, and it is highly factually unlikely that items of value are kept in tinfoil in a person's wallet. If the State was concerned with protecting arrestee's property, the wallet and/or the tinfoil packs could have been inventoried and retained without the necessity of intrusion into the tinfoil and thus have protected itself against claims or disputes over lost or stolen property by merely listing on the inventory sheet four packets of tinfoil.

CONCLUSION

For these reasons a writ of certiorari should issue to review the judgment opinion of the Supreme Court of the State of Louisiana.

Respectfully submitted,

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Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this _____day of October, 1980, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to Abbott J. Reeves, Assistant District Attorney, Research and Appeals, Post Office Box 465, 419 Derbigny Street, Gretna, Louisiana 70054, as attorney for the State of Louisiana. I further certify that all parties required to be served have been served.

CHARLES C. GARRETSON
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Counsel for Petitioner

APPENDIX

A-1

SUPREME COURT OF LOUISIANA

STATE OF LOUISIANA

VERSUS NO. 66,840

TERRY P. DUPLANTIS

On Appeal from the Twenty-Fourth Judicial District Court

Parish of Jefferson

Honorable Patrick E. Carr, Judge

CALOGERO, Justice

Defendant Terry P. Duplantis was charged by bill of information with possession of a controlled dangerous substance, phencyclidine, in violation of R.S. 40:467. After a jury trial defendant was found guilty as charged and was sentenced to five years at hard labor. The only issue raised on this appeal is whether the trial court erred in denying defendant's motion to suppress.

On March 3, 1979 defendant was arrested in a model apartment of the Bissonet Apartments in Jefferson Parish for

criminal trespass. After being taken to the Jefferson Parish Sheriff's Office and being booked on that charge, defendant was required to surrender his wallet and other personal belongings to the booking officer. The booking officer then looked through defendant's wallet and found four aluminum foil packets containing a crystalline substance (later learned to be phencyclidine) in one of the wallet's compartments. Defendant was then arrested on the instant charge.

At the hearing on the motion to suppress defendant contended that the seizure and search of his wallet and the subsequent seizure of the foil packets were unlawful. In brief he argues that even if the confiscation of the personal property and the inventory search of the wallet were authorized, the booking officer exceeded the scope of his authority. He contends that while the officer might have been authorized to inventory money, credit cards, and other things of value, he could not search under the flaps of the wallet or open the foil packets found there and that the alleged inventory search was in fact a subterfuge for a warrantless search for contraband.

The confiscation of an arrestee's property at the time he is booked on a charge is authorized under Louisiana law. In *State v. Taylor*, 347 So.2d 172, 179 (1977) this Court rejected the argument that a search of a notebook surrendered at the time of the booking was unlawful because done without a warrant. There the Court noted that the surrender of personal effects and inventory search at the time of booking are designed to protect the arrestee's property, the security of his incarceration,

and the personal safety of those who come in contact with him. Furthermore, Article 228 of the Code of Criminal Procedure requires that such surrender be made. That article provides that as part of the routine booking procedure a list of any property taken from the defendant shall be entered in a book together with his name, address, the offense charged against him, by whom he was arrested and the date and the time of the booking.*

An inventory search of an arrestee's property at the time he is booked is also constitutionally permissible. As recognized by the United States Supreme Court in *South Dakota v. Opperman*, 96 S.Ct. 3092 (1976), the inventory search procedures have developed in response to three distinct needs: the protec-

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* La. C. Cr. P. art. 228 provides as follows:

> "It is the duty of every peace officer making an arrest, or having an arrested person in his custody, promptly to conduct the person arrested to the nearest jail or police station and cause him to be booked. A person is booked by an entry, in a book kept for that purpose, showing his name and address, the offense charged against him, by whom he was arrested, a list of any property taken from him, and the date and time of booking. Every jail and police station shall keep a book for the listing of the above information as to each prisoner received. The book shall always be open for public inspection. The person booked shall be imprisoned unless he is released on bail."

tion of the *owner's property* while it remains in police custody; the protection of the police against *claims or disputes over lost or stolen property;* and the protection of the *police from potential danger.* In *State v. Jewell,* 338 So.2d 633 (1966) this Court also recognized the inventory exception to the requirement for a warrant. However in *Jewell* the Court emphasized that an essential requirement to a valid inventory search is that the police must not have acted in *bad faith* and must not have used the *inventory procedure as a subterfuge for a warrantless search.*

In the instant case, Deputy Doody, the booking officer, testified at the hearing on the motion to suppress that at the time defendant was booked on the criminal trespass charge, he was asked to surrender his personal belongings. Then as a matter of routine procedure, the officer checked defendant's wallet to determine how much money, credit cards and other things of value he had with him when he arrived at the station, and to list them as required by law. The officer also testified that while he went through the wallet he looked for possible stolen credit cards and *other contraband.* In the process he looked under one of the flaps of the wallet and discovered the four tin foil packets at issue.

Although Deputy Doody stated that at least part of the reason that he searched defendant's wallet was to discover any possible stolen credit cards or contraband, the search was made in accordance with standard police procedure to list all of the property taken from the defendant at the time he is booked. In

accordance with such procedure the officer was authorized to search for and to list anything of value taken from defendant at the time he was booked. The fact that the foil packets were discovered under a "flap" in one of the wallet's compartments does not make the inventory search invalid. Because wallets are designed with many compartments expressly for the purpose of holding valuables, the officer was justified in searching each of the wallet's compartments. Such a search did not therefore exceed the officer's authority to search.

Defendant argues that even after the officer found the foil packets, he was not authorized under the inventory search exception to open the packets and discover the contraband. He contends that it was obvious that nothing of value could have been contained in the packets and that an inventory search of then is invalid.

As indicated above the officer's search of the wallet was justified. In the course of this legally authorized inventory search for valuables, he discovered the foil packets. He thereupon *opened* the packets to *facilitate his making a comprehensive examination and list of all the contents as is required.* There was therefore no need for the officer to obtain *a warrant before opening the foil packets.*

Because the evidence was discovered in the process of a routine inventory search we find that the trial court did not err in denying defendant's motion to suppress.

Decree

Accordingly defendant's conviction and sentence are affirmed.

AFFIRMED.

X X X

SUPREME COURT OF LOUISIANA

NO. 66,840

STATE OF LOUISIANA

VERSUS

TERRY P. DUPLANTIS

LEMMON, Justice, Concurring.

The scope of a booking search incident to a lawful arrest is extremely broad. A person lawfully subjected to a custodial arrest (particularly for a crime such as criminal trespass) has very little, if any, legitimate expectation of privacy as to things on his person, and it is not offensive to the dignity of the defendant's person for the court to decline to limit the police to searching for dangerous weapons or valuable items. *United States v. Robinson*, 414 U.S. 218, 239 (1973) (Powell, J., Concurring).